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ALABAMA
DAM SECURITY AND SAFETY ACT

ALABAMA DAM SECURITY AND SAFETY ACT -DRAFT

1

AN ACT

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3 To provide for the inspection and Certification of Dams; to
4 provide a short title; to state the purpose of this Act; to
5 define the term "Dam"; to define certain other terms
6 associated with safe dams; to provide that no action for
7 damages shall be brought against the State or any employee of
8 the State by reason of any action taken or not taken by
9 employees of the State pursuant to this Act; to authorize the
10 promulgation of Rules and Regulations; to provide that it
11 shall be unlawful to Own, Alter, Abandon, Breach, Construct,
12 Operate or Remove a Dam except in accordance with this Act
13 and the Rules and Regulations, orders, and Certificates
14 established pursuant thereto; to require a Certificate to
15 Operate or Construct a Dam; to provide a procedure to apply
16 for and obtain a Certificate; to exempt certain Dams from the
17 certification requirements of this Act; to authorize the
18 establishment of Certificate conditions issued pursuant to
19 this Act; to require certain documents to accompany
20 Certificate applications; to provide that certain conditions
21 be met prior to the issuance of Certificates for the
22 Operation of Dams in existence or being constructed as of the
23 effective date of the Rules and Regulations; to authorize

1 contracts; to provide for the revocation, suspension or
2 modification of Certificates; to provide a procedure for
3 Abandonment, Breach or Removal of Dams; to authorize the
4 issuance of administrative orders to Owners of Dams when such
5 Dams are not in compliance with this Act or the Rules and
6 Regulations; to authorize Emergency action by the State with
7 regard to Dams that are an immediate threat to human life or
8 property; to provide for rights of investigation, entry,
9 access and inspection; to provide for administrative and
10 judicial review; to provide for the powers and duties of the
11 Agency; to provide for the powers and duties of the Director;
12 to provide that a violation of this Act shall constitute a
13 misdemeanor; to provide for civil penalties for a violation
14 of this Act or any Certificate or administrative order issued
15 pursuant to this Act; to provide a procedure for imposing
16 civil penalties; to provide for injunctive relief; to provide
17 for severability; to provide for an effective date; to repeal
18 conflicting laws; and for other purposes.

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1 **BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:**

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3 **00-00-01. Short title.**

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5 This Act shall be known and may be cited as the "Alabama
6 Dam Security and Safety Act of 2003."

7

8 **00-00-02. Declaration of purpose.**

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10 It is the purpose of this Act to provide for the inspection
11 and certification of certain Dams in order to protect the
12 health, safety, and welfare of all the citizens of the State.
13 The inspection and certification of certain Dams is properly
14 a matter for regulation under the police powers of the State.

15

16 **00-00-03. Definitions.**

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18 As used in this Act, the term:

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20 (1) "Abandon" or "Abandonment" means to render a Dam non-
21 impounding by dewatering and making the Dam incapable of
22 impounding water.

23

1 (2) "Adverse Consequences" means negative impacts that may
2 occur upstream, downstream, or at locations remote from the
3 Dam as a direct and proximate result of the existence or
4 operation of such Dam. The primary concerns are loss of
5 human life, loss of critical infrastructure, property damage
6 and lifeline disruption.

7
8 (3) "Agency" means the Office of Water Resources, a division
9 of the Alabama Department of Economic and Community Affairs
10 or its successor.

11

12 (4) "Alterations" or "Repairs" means Alterations,
13 modifications, or Repairs to existing Dam and Appurtenant
14 Works as may directly affect the safety of the Dam or
15 Reservoir, as determined by the Agency.

16

17 (5) "Approval" means authorization in writing issued by the
18 Director to an Owner who has applied to the Agency for
19 permission to Construct, Reconstruct, Enlarge, Repair, alter,
20 modify, Remove, maintain, Operate or Abandon a Dam and which
21 specifies the conditions or limitations under which work is
22 to be performed by the Owner or under which approval is
23 granted.

1

2 (6) "Appurtenant Works" include, but are not limited to, such
3 structures as spillways, either in the Dam or separate
4 therefrom; the Reservoir and its rim; low-level outlet works;
5 and liquid conduits such as tunnels, pipelines or penstocks,
6 either through the Dam or its abutments.

7

8 (7) "Breach" means partial Removal of a Dam, creating a
9 channel through the Dam.

10

11 (8) "Certificate" means for a High Hazard Potential Dam a
12 written authorization to Construct and/or Operate a Dam
13 issued by the Director. A Certificate means for all other
14 Dams a written acknowledgement of Dam Construction or Removal
15 solely for inventorying purposes.

16

17 (9) "Construct" or "Construction" means the design,
18 building, Alteration, or Reconstructing of any Dams, together
19 with Appurtenant Works, for the Impoundment or diversion of
20 water or liquid substances and shall include any activity
21 which, other than routinely as part of an approved
22 maintenance program, Repairs or restores the Dam, or Alters

1 its design, shape, or structural characteristics, and shall
2 also include any Enlargement of such.

3

4 (10) "Critical Infrastructure" means systems and assets
5 associated with or impacted by dams or impoundments, whether
6 physical or virtual, so vital to Alabama that the incapacity
7 or destruction of such systems and assets would have a
8 debilitating impact on security, economic stability, public
9 health or safety, or any combination of those matters,
10 consistent with the "Critical Infrastructures Protection Act
11 of 2001."

12

13 (11) "Dam" shall mean any artificial barrier, including
14 Appurtenant Works, which impounds or diverts water,
15 wastewater, or liquid borne materials and which:

16

17 a. Has an impounding capacity at Maximum Water
18 Storage Elevation of at least 50 acre-feet; or

19

20 b. Is 25 feet or more in height; or

21

1 c. Will create a Probable Loss of Human Life in the
2 event of failure or improper operation, regardless
3 of height or storage capacity; or

4
5 d. Will create a Probable Loss of Critical
6 Infrastructure in the event of failure or improper
7 operation, regardless of height or storage
8 capacity.

9
10 (12) "Dam Safety Program" means the program established by
11 the Agency, pursuant to this Act.

12
13 (13) "Days" used in establishing deadlines, means calendar
14 Days, including Saturdays, Sundays, and Holidays.

15
16 (14) "Director" means the Director of the Office of Water
17 Resources or his/her designee. The Director of the Office of
18 Water Resources or designee must be an Engineer. In
19 addition, the Director of the Office of Water Resources must
20 have a current license to practice engineering in the State
21 of Alabama.

1 (15) "Emergency" includes, but is not limited to, Breaches
2 and all conditions leading to or causing a Breach,
3 overtopping, or any other condition in a Dam and its
4 Appurtenant Works that may be construed as unsafe or
5 threatening to human life or Critical Infrastructure;

6

7 (16) "Emergency Action Plan" means the plan to determine when
8 an Emergency with the Dam exists and what to do to prevent or
9 mitigate the consequences of a failure to protect against
10 Probable Loss of Human Life and/or Critical Infrastructure.

11

12 (17) "Engineer" means a qualified professional Engineer. The
13 term "qualified professional Engineer" as used in this Act is
14 intended to mean an individual who has a background in civil
15 engineering and;

16

17 a. Is a licensed professional Engineer in the
18 State; and

19

20 b. Is competent in areas related to Dam
21 investigation, design, Construction, and Operation
22 for the type of Dam being investigated, designed,
23 Constructed or Operated; and

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c. Has at least seven (7) years of relevant experience in areas such as investigation, design, Construction, Reconstruction, Enlargement, Repair, Alteration, maintenance, Operation, Breach, Removal or Abandonment of Dams; and

d. Understands adverse Dam incidents, failures and the potential causes and consequences of failures; or

e. Is the State Conservation Engineer of the Natural Resources Conservation Service.

(18) "Enlarge" or "Enlargement" means any change in or addition to an existing Dam or Impoundment, which raises or may raise the Maximum Water Storage Elevation of the liquid impounded by the Dam or Reservoir.

(19) "Hazard Potential" means possible Adverse Consequences that result from the release of water or stored contents due to failure or improper Operation of the Dam or Appurtenant Works. The Hazard Potential classification of a Dam does not

1 reflect in any way on the current condition of the Dam and
2 its Appurtenant Works (e.g. safety, structural integrity,
3 flood routing capacity).
4

5 (20) "Height" means the distance from the natural bed of the
6 Impoundment, stream or watercourse measured at the downstream
7 toe of the Dam to the Maximum Water Storage Elevation or
8 means the distance from the lowest elevation of the outside
9 limit of the Dam, if the Dam is not across a stream channel
10 or watercourse, to the Maximum Water Storage Elevation.
11

12 (21) "High Hazard Potential Dam" means a Dam assigned the
13 high Hazard Potential classification where failure or mis-
14 Operation will cause Probable Loss of Human Life.
15

16 (22) "Local Unit of Government" means any political
17 subdivision of this state including, but not limited to, a
18 county, city, town, or municipality, if the political
19 subdivision provides local government services in a
20 geographically limited area of this state as its primary
21 purpose and it has the power to act primarily on behalf of
22 that area.
23

1 (23) "Low Hazard Potential Dam" means a Dam not assigned the
2 Moderate or High Hazard Potential classification.

3

4 (24) "Maximum Water Storage Elevation" means the elevation of
5 the top of the Dam.

6

7 (25) "Moderate Hazard Potential Dam" means a Dam assigned the
8 Moderate Hazard Potential classification where failure or
9 improper Operation results in no Probable Loss of Human Life
10 but will cause Probable Loss of Critical Infrastructure.

11

12 (26) "Operate" or "Operation" means to take actions to
13 control the Impoundment or diversion of a liquid substance by
14 a Dam.

15

16 (27) "Owner" means any Person who owns, controls, Operates,
17 maintains, manages, or proposes to Construct, Reconstruct,
18 Enlarge, Repair, Alter, Remove or Abandon a Dam or Reservoir.

19

20 (28) "Person" means any and all Persons, natural or
21 artificial, including any individual, entity, firm,
22 association, organization, partnership, business, trust,
23 corporation, company, any federal agency, authority, or

1 corporation created by the United States of America, and the
2 State and all political subdivisions, regions, districts,
3 municipalities, counties, and public agencies thereof.

4

5 (29) "Probable Loss of Critical Infrastructure" means that
6 the loss of critical infrastructure will likely occur, is
7 reasonably expected to occur, or is realistic as a result of
8 any action or inaction.

9

10 (30) "Probable Loss of Human Life" means that the loss of
11 human life will likely occur, is reasonably expected to
12 occur, or is realistic as a result of any action or inaction.

13

14 (31) "Reconstruction" means Removal and replacement of an
15 existing Dam.

16

17 (32) "Remove" or "Removal" means complete elimination of the
18 Dam embankment and/or Appurtenant Works.

19

20 (33) "Reservoir" or "Impoundment" means any basin, which
21 contains or will contain impounded water, wastewater, or
22 liquid-borne materials by virtue of its having been impounded
23 by a Dam.

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(34) "Responsible Authority" means those state, county, city or other offices that are charged with maintaining public safety and that are listed in any Emergency Action Plan required by this Act or the Rules and Regulations.

(35) "Rules and Regulations" means the most recent policies, requirements, regulations, rules or standards adopted by the Agency pursuant to the provisions of the Alabama Administrative Procedure Act, Chapter 22, Title 41, as amended, in order to enforce this Act.

(36) "State" means the State of Alabama.

(37) "Surface Mining Act" means Chapter 16, Title 9 of the Code of Alabama, as amended.

(38) "Water Storage Capacity" means the maximum volume of liquid, which can be stored by the Dam or Reservoir.

00-00-04. General Provisions.

1 It shall be unlawful for any Person to Own, Construct,
2 Operate, Abandon, Breach or Remove a Dam that is subject to
3 this Act except in conformance with this Act, Rules and
4 Regulations and administrative orders established and issued
5 under this Act.

6

7

8 **00-00-05. Duties and Authorities.**

9

10 (1) In addition to any other powers and duties provided for
11 in this Act, the Director shall have and may exercise the
12 following powers and duties:

13

14 a. To exercise general supervision over the
15 administration and enforcement of this Act and the
16 Rules and Regulations;

17

18 b. The authority to advise, consult, cooperate,
19 contract, and enter into cooperative agreements
20 with Persons, Local Units of Government, and other
21 governmental agencies or committees, including, but
22 not limited to, the State Soil and Water
23 Conservation Committee, the Alabama Department of

1 Environmental Management, the Natural Resources
2 Conservation Service, the Alabama Department of
3 Transportation, the Alabama Association of
4 Conservation Districts, or the United States Army
5 Corps of Engineers for the purposes of carrying out
6 this Act;

7
8 c. To take such other actions as may be necessary
9 to carry out this Act;

10
11 d. To approve or deny the Impoundment of a liquid
12 substance by a High Hazard Potential Dam, pursuant
13 to this Act and the Rules and Regulations;

14
15 e. To issue Certificates for the Construction and
16 Operation of Dams;

17
18 f. To issue Approvals for and specify conditions
19 under which Dams may be Abandoned, Breached or
20 Removed;

21
22 g. To specify conditions under which any employee
23 of the Agency or its agents may enter upon lands of

1 Owners of Dams;

2
3 h. To require information or written reports from
4 the Owner for the purpose of complying with this
5 Act;

6
7 i. To direct, conduct and supervise
8 investigations, as the Director may deem necessary
9 to carry out the Director's duties as prescribed in
10 this section;

11
12 j. Upon request of the governing authority of a
13 Local Unit of Government to provide technical
14 assistance to that Local Unit of Government
15 relative to Dams within their jurisdiction. The
16 assistance may include, but shall not be limited to
17 visual inspections, written reports on any
18 structural inadequacies discovered during
19 inspections, written descriptions of the potential
20 Dam failure flood plain, technical advice on
21 procedures to correct structural inadequacies, and
22 assistance in the development of Dam safety
23 ordinances;

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- k. To impose conditions upon the issuance of any Certificate to ensure compliance with this Act and the Rules and Regulations and may require the submission of plans, specifications and other information as may be deemed necessary prior to the issuance of a Certificate for the Construction and Operation of a High Hazard Potential Dam;
- l. To require the submission of documentation, such as plans, specifications, drawings, and other information as the Director may deem necessary by the Engineer who undertakes the design of a High Hazard Potential Dam to be Constructed after the effective date of this Act; and
- m. To issue administrative orders to Owners of Dams when such Dams are not in compliance with this Act or the Rules and Regulations.

(2) In the performance of its duties, the Agency shall:

- a. Establish by Rules and Regulations such

1 policies, requirements, conditions or standards
2 governing the design, Construction, Operation,
3 maintenance, Abandonment, Breach and Removal of
4 Dams which are Certified or required to be
5 Certified under this Act, including, but not
6 limited to, the following:

7
8 i. Establish by Rules and Regulations
9 requirements for record retention by Dam Owners;
10 and

11
12 ii. Establish by Rules and Regulations the
13 minimum criteria for the hydrologic, hydraulic
14 and other design requirements of High Hazard
15 Potential Dams.

16
17 b. Establish by rules or regulations the criteria
18 to be included in Dam application forms;

19
20 c. Establish by rules or regulations the standards
21 to govern inspection of Dams;

1 d. Direct and conduct investigations regarding
2 Construction, Reconstruction, Enlargement,
3 Alteration, Repair, Operation, Abandonment, Breach,
4 or Removal of any Dam as the Agency may reasonably
5 deem necessary to carry out its duties as
6 prescribed in this Act and Rules and Regulations.
7 Provided, however, any proprietary or confidential
8 information concerning business activities
9 collected by the Agency will solely be utilized for
10 the purposes of this Act and will not be
11 distributed to the public;

12
13 e. Establish by rules or regulations the standards
14 for an Emergency Action Plan for Dams;

15
16 f. Adopt, modify, repeal, and promulgate other
17 rules or regulations as are necessary and proper to
18 carry out the purposes of this Act and other
19 applicable provisions of the Code of Alabama;

20
21 g. Establish by rules or regulations the criteria
22 by which the Agency will take Emergency action,
23 when necessary;

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h. Apply for, accept, and disburse advances, loans, grants, contributions, and any other form of assistance from the federal government, the state or other public body, or from any sources, public or private, for the purposes of this Act, and enter into and carry out contracts or agreements in connection therewith, and include in any contract for financial assistance with the federal government such conditions imposed pursuant to federal laws as deemed reasonable and appropriate and which are not inconsistent with the purposes of this Act;

i. Develop Rules and Regulations for the disbursement of funds to Owners to bring their Dams into compliance with this Act and Rules and Regulations;

j. Report required Dam information to the National Performance of Dams Programs; and

k. Report inventory and other necessary information
to the National Inventory of Dams as requested.

00-00-06. Inventory and classification.

(1) It shall be the duty of the Agency to inventory the Dams
in the state and to classify each Dam into one of the
following categories:

- a. Low Hazard Potential;
- b. Moderate Hazard Potential; or
- c. High Hazard Potential.

(2) The initial inventory required by this Act shall be
completed within five (5) years of the effective date of the
Rules and Regulations, unless otherwise extended by the
Director. The Agency shall reinventory and reclassify, if
necessary, the Dams in the State at least once every five (5)
years after the completion of the initial inventory. It may
be necessary for the Agency to gather updated information
regarding the characteristics of the Dam and its surroundings
in order to verify classification.

1 (3) The following Low Hazard Potential Dams are not required
2 to be included in the inventory of Dams maintained pursuant
3 to this Act:

4

5 a. Any Dam which is less than six (6) feet in
6 height, regardless of its storage capacity; or

7

8 b. Any Dam which has an impounding storage
9 capacity at Maximum Water Storage Elevation of less
10 than 15 acre feet, regardless of its height.

11

12 (4) The Agency is authorized to use information furnished to
13 the Agency by other Persons, to accomplish the purposes of
14 this section, including, but not limited to, the
15 classification of Dams as set forth in subsection (1) of this
16 section.

17

18 **00-00-07. Certificate, Application and Notification**

19

20 (1) The following provisions apply to all Dams:

21

22 a. Any Owner, unless otherwise exempt by this Act,
23 who desires to Construct a Dam for the purpose of

1 impounding or diverting liquid, but has not
2 commenced the Construction as of the effective date
3 of the Rules and Regulations, shall do the
4 following:

5
6 i. Request of the Agency, and the Agency shall
7 furnish the Person with, based on information
8 provided to the Agency by the requestor, an
9 initial opinion as to whether the proposed Dam,
10 if Constructed, would be classified as a Low,
11 Moderate or High Hazard Potential Dam for the
12 purposes of this Act; and

13
14 ii. Submit a Certificate application to the
15 Agency. Certificates issued for the Construction
16 of Dams pursuant to this section shall also
17 authorize the Operation of the Dams Constructed
18 in accordance with the Certificate.

19
20 b. Any Owner who is operating an existing Dam
21 prior to the effective date of the Rules and
22 Regulations or who is in the physical process of

1 constructing a Dam as of the effective date of the
2 Rules and Regulations, shall do the following:

3
4 i. Request of the Agency, and the Agency shall
5 furnish the Person with, based on information
6 provided to the Agency by the requestor, an
7 initial opinion as to whether the Dam would be
8 classified as a Low, Moderate or High Hazard
9 Potential Dam for the purposes of this Act,
10 provided that the Person may continue to Operate
11 or Construct the Dam pending classification by
12 the Agency; and

13
14 ii. Submit a Certificate application to the
15 Agency provided that the Owner may continue to
16 Operate or Construct the Dam pending final
17 action by the Agency on the application for a
18 Certificate. Certificates issued for the
19 Construction of Dams pursuant to this section
20 shall also authorize the Operation of the Dams
21 Constructed in accordance with the Certificate.

1 c. If the Agency reclassifies a Dam because of
2 either alterations in the Dam or changed
3 circumstances that would modify the classification
4 of the Dam, the Agency shall give notice to the
5 Owner as to the determination regarding the
6 reclassification of the Dam and issue a revised
7 Certificate outlining the requirements of the new
8 classification.

9
10 (2) The following provisions apply to High Hazard Potential
11 Dams:

12
13 a. Construction, Reconstruction, Enlargement,
14 Alteration, Repair, Abandonment, Breach, or Removal
15 of High Hazard Potential Dams and the supervision
16 of Construction shall be under the supervision and
17 charge of an Engineer;

18
19 b. Prior to Construction of a High Hazard
20 Potential Dam, the Owner shall provide to the
21 Agency the names and addresses of the Person(s)
22 owning the Dam and the Person(s) having direct
23 responsibility for the Operation of the Dam;

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- c. The Owner shall record the location of the High Hazard Potential Dam on the official land plat for the county or counties in which the High Hazard Potential Dam is located;
- d. The Engineer who undertakes the design of a High Hazard Potential Dam to be Constructed after the effective date of the Act must submit to the Director documentation, such as plans, specifications, drawings, and other information as required by the Rules and Regulations;
- e. The supervising Engineer of a High Hazard Potential Dam Construction project shall submit progress reports as required by the Rules and Regulations;
- f. Certificate applications for the Construction of a High Hazard Potential Dam shall be accompanied by certification from an Engineer stating that he/she is responsible for the design of the Dam and that the design meets all standards established by the

1 Agency in the Rules and Regulations. As an
2 alternative to a certificate from an Engineer, the
3 Agency may accept a Certificate application
4 accompanied by a certificate from the State
5 Conservation Engineer of the United States Natural
6 Resources Conservation Service stating that the
7 design of the Dam meets all standards established
8 by the Agency and the Rules and Regulations;

9
10 g. If the Director disapproves an application for
11 Construction of a High Hazard Potential Dam, a copy
12 of the application shall be returned to the
13 applicant with a statement of the reasons for the
14 disapproval. The applicant may reapply for a
15 Certificate after incorporating the changes
16 required by the Director; and

17
18 h. The Director may revoke, suspend, or modify any
19 Certificate issued pursuant to this Act or deny the
20 issuance of a Certificate for cause including, but
21 not limited to, the following:

1 i. Violation of any condition of the
2 Certificate;

3
4 ii. Obtaining a Certificate by misrepresentation
5 or by failure to disclose fully all material
6 facts;

7
8 iii. Violation of any provision of this Act or
9 the Rules and Regulations; or

10
11 iv. Change in any condition of the Dam that
12 requires revocation, suspension, or modification
13 of a Certificate in order to ensure compliance
14 with this Act or the Rules and Regulations.

15
16 (3) The following provisions apply to Moderate Hazard
17 Potential Dams:

18
19 a. The certification requirements for a Moderate
20 Hazard Potential Dam will be for the Owner of the
21 Dam to maintain an Operation and Maintenance Plan,
22 an Emergency Action Plan and to notify the Agency
23 of Alterations or Removal of the Dam; and

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b. The application and certification process is not discretionary by the Agency. Upon notification to the Agency through an application, the Agency shall issue a Certificate which will solely recognize the Dam as part of the inventory.

(4) The following provisions apply to Low Hazard Potential Dams:

a. The certification requirements for a Low Hazard Potential Dam will be notification to the Agency of Alterations or Removal of the Dam; and

b. The application and certification process is not discretionary by the Agency. Upon notification to the Agency through an application, the Agency shall issue a Certificate which will solely recognize the Dam as part of the inventory.

00-00-08. Exemptions.

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(1) Notwithstanding other provisions of this Act, the following Dams shall be exempt from all requirements of this

1 Act except those necessary to maintain the inventory provided
2 herein below:

3 a. Any Dam owned and Operated by any department
4 or agency of the United States government, provided
5 those Dams are regulated in a manner that meets or
6 exceeds the requirements of this Act;

7
8 b. Any Dam licensed by the Federal Energy
9 Regulatory Commission, or for which a license
10 application is pending with the Federal Energy
11 Regulatory Commission;

12
13 c. Any Dam as otherwise defined by this Act shall
14 be exempt from the provisions of this Act for so
15 long as the Dam is regulated and permitted under
16 the Surface Mining Act. However, if the Dam so
17 Constructed is classified by the Director as a High
18 Hazard Potential Dam, the Owner shall, upon the
19 completion of the mining activity in connection
20 with which the Dam was Constructed, either drain
21 and reclaim the Impoundment formed by the Dam
22 pursuant to the mined land use plan approved under
23 the Surface Mining Act or stabilize the Impoundment

1 as a lake pursuant to the mined land use plan and
2 the Rules and Regulations. If the Impoundment is
3 reclaimed as a lake and the Dam which created the
4 Impoundment remains in place as a High Hazard
5 Potential Dam, then, before the lake is deemed to
6 be reclaimed so as to release the Owner from
7 his/her obligations under the Surface Mining Act,
8 the Owner shall certify to the Director and the
9 Owner(s) of the property (ies) on which the High
10 Hazard Potential Dam is located that the High
11 Hazard Potential Dam is in full compliance with the
12 provisions of this Act and the Rules and
13 Regulations; and

14
15 d. Any Dam Owner who can show proof that the
16 structure is already required to be regulated may
17 be exempt, upon a determination by the Director
18 that those regulatory requirements meet or exceed
19 the requirements of this Act and the Rules and
20 Regulations.

1 (2) Exempt Dams shall be required to submit information to
2 the Agency in accordance with the Rules and Regulations for
3 purposes of maintaining the inventory.

4

5 **00-00-09.Dam Removal.**

6

7 (1) It shall be unlawful for the Owner of any High Hazard
8 Potential Dam, to Abandon, Breach or Remove the Dam without
9 the prior written approval of the Director, or as may be
10 provided for under the Rules and Regulations.

11

12 (2) Within sixty (60) Days after the receipt of a completed
13 application for Abandonment, Breach or Removal of a High
14 Hazard Potential Dam, the Director shall approve, or approve
15 subject to appropriate conditions, the applicant's request
16 for Abandonment, Breach or Removal. The Abandonment, Breach
17 or Removal of a Dam shall follow the requirements set out in
18 the Approval.

19

20 (3) The Director has the authority to request Moderate and
21 Low Hazard Potential Dam Owners to notify the Agency of the
22 Abandonment, Breach or Removal of any Dam, for the purpose of
23 removing that Dam from the inventory.

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2 **00-00-10. Inspection of Dams.**

3

4 (1) The following provision applies to all Dams:

5

6 a. It shall be unlawful for any Person to refuse
7 entry or access to any authorized representative of
8 the Agency who requests entry for purposes of
9 fulfilling the requirements of this Act and who
10 presents appropriate identification. It shall also
11 be unlawful to obstruct, hamper, or interfere with
12 any representative while in the process of carrying
13 out his/her official duties, such as classification
14 determination, pursuant to this Act and the Rules
15 and Regulations.

16

17 (2) The following provisions apply to High Hazard Potential
18 Dams:

19

20 a. The Director, or any authorized agency or
21 Contractor, is authorized and shall be permitted by
22 the Owner to make a visual inspection of High
23 Hazard Potential Dams. After visual inspection, and

1 upon a finding by the Director or the Agency that a
2 Dam is not in compliance with any provision of this
3 Act or the Rules and Regulations, the Director may
4 issue an administrative order to the Owner of the
5 Dam requiring the Owner to undertake, at the
6 Owner's expense, the maintenance, Alteration,
7 Repair, Reconstruction, change in Construction or
8 location, or Removal as may be deemed necessary by
9 the Director which may include the draining or
10 lowering of the liquid level of the Dam, within the
11 time period specified in the administrative order;

12
13 b. Based upon a visual inspection of a High Hazard
14 Potential Dam, if the Director determines that the
15 Dam is not in compliance with this Act or the Rules
16 and Regulations, and there is not sufficient time
17 to issue an administrative order, the Director may
18 immediately take measures as may be necessary to
19 provide Emergency protection to human life,
20 including lowering the Reservoir level or
21 destroying the Impoundment, in whole or in part.
22 The costs of the Emergency measures may be
23 recovered by the Agency; and

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c. This Act shall not be construed as exempting any existing Dam, prior to the issuance of a Certificate authorizing the Operation of the Dam, from compliance with the design standards established pursuant to this Act and the Rules and Regulations. Further, in the event a visual inspection provided for in the Rules and Regulations reveals that distress of the Dam is indicated by various conditions including, but not limited to, lack of adequate maintenance, seepage, surface cracks, settlement, movement, or erosion, or when the inspection indicates that the Dam was not designed or constructed in accordance with the requirements of this Act and the Rules and Regulations, a Certificate may be issued only after the Director has received a detailed engineering study as provided for in this Act and the Rules and Regulations. Based upon a review of the study, the Director shall deny the Certificate or issue the Certificate subject to conditions necessary to bring the Dam into compliance with this Act and the Rules and Regulations.

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(3) The following provision applies to Moderate and Low Hazard Potential Dams:

a. The Agency will not be required to perform structural inspections of Moderate and Low Hazard Potential Dams. It may be necessary for the Agency to gather updated information regarding the characteristics of the Dam and its surroundings in order to verify classification.

00-00-11. Emergency Action Plan.

(1) The Owner of a High Hazard Potential Dam shall develop an Emergency Action Plan, that must be approved by the Director and provided to the Agency. The plan shall include, but not be limited to, the notification of the Agency and Responsible Authorities of any conditions which threaten the safety of the High Hazard Potential Dam, including, but not limited to, erosion, surface cracks, seepage, settlement, or movement of the High Hazard Potential Dam and the actions to be taken to protect against loss of human life. A

1 certificate may be issued only after the Director has
2 approved and received the Emergency Action Plan.

3

4 (2) The Owner of a Moderate Hazard Potential Dam shall
5 maintain an Emergency Action Plan. The Emergency Action Plan
6 shall be provided to the Agency upon request.

7

8 **00-00-12. Operations and Maintenance.**

9 (1) The Owner of a High Hazard Potential Dam shall develop
10 and implement a plan for operation and maintenance of the
11 High Hazard Potential Dam that must be approved by the
12 Director and provided to the Agency. A certificate may be
13 issued only after the Director has approved and received the
14 operation and maintenance plan.

15

16 (2) The Owner of a Moderate Hazard Potential Dam shall
17 develop and implement a plan for operation and maintenance of
18 the Moderate Hazard Potential Dam. The operation and
19 maintenance plan shall be provided to the Agency upon
20 request.

21

22 **00-00-13. Administrative and judicial review.**

23

1 Any Person who is aggrieved or adversely affected by an order
2 or action of the Director or the Agency may seek review of
3 such order or action in accordance with the Alabama
4 Administrative Procedures Act, Chapter 22, Title 41, as
5 amended, in order to enforce this Act.

6

7 **00-00-14. Injunctive relief.**

8

9 Whenever in the judgment of the Director, any Person who has
10 engaged in or is about to engage in any act or practice which
11 constitutes or will constitute an unlawful action under this
12 Act, the Director may make application to the circuit court
13 of the county in which the unlawful act or practice has been
14 or is about to be engaged in, or in which jurisdiction it is
15 appropriate, for an order enjoining the act or practice, or
16 for an order requiring compliance with this Act or the Rules
17 and Regulations. Upon a showing by the Director that the
18 Person has engaged in or is about to engage in any such act
19 or practice, a permanent or temporary injunction, restraining
20 order, or other order shall be granted without the necessity
21 of showing lack of an adequate remedy at law and without the
22 requirement of establishing bond by the circuit court in
23 which the relief is sought.

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00-00-15. Liability for damages.

(1) Nothing in this Act shall be construed to constitute a waiver of the sovereign immunity of the State, or the Agency.

(2) No action shall be brought against the State, the Agency, the Director or any member, officer, or employee of the State or the Agency for damages sustained through the partial or total failure of any Dam or for any act or responsibility pursuant to this Act, including specifically, but not limited to, any action taken or not taken by the Agency, the Director or the Agency's employees, officers or representatives.

(3) Nothing in this Act and any order, action, or advice of the Director or the Agency or any representative thereof shall be construed to relieve an Owner of the legal duties, obligations, or liabilities incident to the Ownership or Operation of the Dam.

00-00-16. Criminal and civil penalties.

1 (1) Any Person who engages in any action made unlawful by
2 this Act or the Rules and Regulations shall be guilty of a
3 misdemeanor. Each day of continued violation shall
4 constitute a separate offense.

5

6 (2) As an alternative to criminal enforcement pursuant to
7 subsection (1) of this section, the Director may impose civil
8 penalties in accordance with the following provisions:

9

10 a. Any Person violating any provision of this Act
11 or any Certificate condition or limitation
12 established pursuant to this Act or negligently or
13 willfully failing or refusing to comply with any
14 final order of the Director issued as provided in
15 this Act shall be liable for a civil penalty not to
16 exceed \$5000.00 for the violation and an additional
17 civil penalty not to exceed \$1000.00 for each day
18 during which the violation continues;

19

20 b. Whenever the Director has reason to believe
21 that any Person has violated any provision of this
22 Act, the Rules and Regulations, or any Certificate
23 condition or limitation established pursuant to

1 this Act or has negligently or willfully failed or
2 refused to comply with any final order of the
3 Director, the Director may cause a hearing to be
4 conducted before a hearing officer appointed by the
5 Agency. Upon a finding that the Person has
6 violated any provision of this Act, the Rules and
7 Regulations or any Certificate condition or
8 limitation established pursuant to this Act or has
9 negligently or willfully failed or refused to
10 comply with a final administrative order of the
11 Director, the hearing officer shall issue a written
12 decision imposing the civil penalties as are
13 provided in paragraph (1) of this subsection. The
14 hearing and any administrative or judicial review
15 thereof shall be conducted in accordance with
16 applicable Alabama law; and

17
18 c. All civil penalties recovered under this
19 section by the Agency or the Attorney General shall
20 be deposited into the State Treasury to the credit
21 of the General Fund, except that portion that
22 represents the reasonable costs incurred by the
23 Agency or the Attorney General to recover such

1 penalties which shall be deposited to the credit of
2 the operating fund of the Agency or the Attorney
3 General, whichever incurred such costs.
4

5 **00-00-17. Severability.**

6
7 The provisions of this Act are severable. If any part of
8 this Act is declared invalid or unconstitutional, that
9 declaration shall not affect the part that remains.
10

11 **00-00-18. Repeal of Provisions in Conflict with this Act.**

12
13 All laws or parts of laws that conflict with this Act are
14 repealed.
15

16 **00-00-19. Effective Date.**

17
18 This Act shall become effective immediately upon its passage
19 and approval by the Governor, or its otherwise becoming law.
20 Any Owner who desires to construct a Dam but who has not
21 commenced such construction as of the effective date of this
22 Act shall be required to comply with this Act and the Rules
23 and Regulations. Any Owner whose Dam is in existence as of

1 the effective date of this Act will be required to comply
2 with this Act and the Rules and Regulations once notification
3 has been given as to the classification of the Dam by the
4 Agency. Owners of High Hazard Potential Dams will have five
5 (5) years after notification to bring those High Hazard
6 Potential Dams into compliance pursuant to this Act.